

# City of Taunton

## Conservation Ordinance

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## **CITY OF TAUNTON CONSERVATION ORDINANCE REGULATIONS**

**As Approved September 8, 2003 and amended 11/22/2004, 1/23/2006, and 6/06/11**

### **I GENERAL PROVISIONS**

#### ***A. Authority***

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Taunton Conservation Ordinance (The Ordinance) and shall be effective upon fulfillment of all legal requirements for their effectiveness.

#### ***B. Purpose***

The purpose of this ordinance is to protect the wetlands, water resources, and adjoining land areas in the City of Taunton (the "City") by controlling activities deemed by the Taunton Conservation Commission (Commission) likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource area values protected by this ordinance"). This ordinance is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00)(the "Act") The Taunton Conservation Commission is empowered to protect the wetlands including specific interests following and to enforce and remediate damages to said wetlands.

The City of Taunton's location within the Taunton River Watershed requires this ordinance to protect four specific concerns. These concerns, as they relate to the eight interests listed in the Act, are as follows. In keeping with protection of public, private and groundwater supplies, the Commission shall have concern with jurisdictional resources that are in Aquifer Protection Zones, as listed in the Zoning Ordinance. In keeping with flood control and storm damage prevention, the Commission shall have concern with jurisdictional resources that are in flood plain districts, including those listed in the Zoning Ordinance. In keeping with prevention of pollution, the Commission shall have concern with both point and nonpoint discharges, including all conservation structures connected to jurisdictional resources. In keeping with protection of land containing shellfish, fisheries, and wildlife habitat, the Commission shall have concern with jurisdictional resources found to contain commercially important shellfish, anadromous and catadramous fish runs, and vernal pool species. The Commission's concern with the above shall be defined as minimizing impact on said resources.

### ***C. Jurisdiction***

The jurisdiction of this Ordinance and these Regulations promulgated here under include all areas currently covered by the Act. It provides for additional protection to areas covered by the Act and expands jurisdiction to some areas that are not currently protected by the Act. The additional areas subject to protection under the Ordinance include but are not limited: to Aquifer Protection Zones as listed in the Zoning Ordinance, jurisdictional resources in flood plain districts, point and non-point discharges, conservation structures, jurisdictional resources found to contain commercially important shellfish, anadromous and catadromous fish runs, vernal pools, vernal pool breeding species, wildlife corridors and Isolated Lands Subject to Flooding. These regulations also create a new area called a Wetland Protection Zone in which building activity may be severely curtailed or denied completely. Such areas are presumed to be significant to the interests of the Ordinance. In addition, certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are regulated by the Ordinance since these areas protect the public interests identified in the Ordinance. See Definitions Section for more detail.(Section II “Jurisdictional ISLF”)

Where a conflict exists between a term or provision of these regulations and the terms and provisions of the Act and the City of Taunton Regulations are more stringent and/or offer greater protection to the resource areas identified, the terms or provisions of the local ordinance and/or local regulations shall control.

### ***D. Fee Schedule***

1. Permit fees are payable at the time of application to the "City of Taunton".
2. The following required filing fees shall be in addition to the required filing fees contained in the Wetlands Protection Act Chapter 131 Section 40 and its associated regulations;

#### **Request for Determination:**

- a. Projects less than 2 acres: \$110.00
- b. Projects 2 acres or more: \$150.00 plus \$25 for each additional acre (single family not to exceed \$175.00)

#### **Notice of Intent/ Abbreviated Notice of intent**

- a. Fifteen percent (15%) of the total filing fee that is calculated for the project under the State Wetlands Act and its associated regulations

#### **Abbreviated Notice of Resource Area Delineation**

- a. Fifteen percent (15%) of the filing fee that is calculated for the project under the State Wetlands Act and its associated regulations (including Riverfront Area adjustment when applicable). In addition to this fee, the following fees shall also apply:
  - b. \$1.00 per linear foot for Vernal Pools, Critical Breeding Habitat, Wildlife Corridor, Top of Bank, Mean Annual High Water, and/ or Isolated Land Subject to Flooding. However, the maximum fee under this item (b) for a residential one

to 3 unit site shall not exceed \$150.00 or \$300.00 for a multi unit (greater than 3 units) site or commercial site

**Stormwater Management Filing (for areas otherwise outside of Conservation Commission Jurisdiction)**

a. \$50 per disturbed acre

**Certificate of Compliance**

a. Projects less than 5 acres and/or single family \$75.00

b. Projects 5 acres or more: \$100.00 plus \$25.00 per acre over five acres

c. Revisit Fee: \$50 per additional visit to check compliance

**Amendments**

a. Fifteen(15%) percent of original filing fee (including the fee calculated for the project under the State Wetlands Act and its associated regulations and any additional fees imposed by the above requirements) (\$75 minimum)

**Extensions**

a. \$~~25~~50.00 per request

b. Projects 5 acres or more: an additional \$10 per acre over 5 acres

**Letters of Ongoing Compliance**

a. \$25.00 per request

All fees collected under this section shall be payable to the City of Taunton. 50% of the additional fees collected under this section shall be credited to the Wetlands Filing Fees Account as designated under the Wetland Protection Act. Control and use of these fees will remain with the Commission alone to be used in a manner consistent with those outlined in the Wetlands Protection Act. The remaining 50% of the additional fees collected under this section shall be allocated to the City of Taunton General Fund from which the Office of Planning and Conservation is funded

***E. Quorum of the Commission***

A quorum consists of a majority of the Commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

The members have such powers as are vested in them by any law or regulation, custom and practice.

***F. Committees/ Officers***

There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties. The Commission shall by majority vote, on an annual basis at the first meeting of the calendar year, elect a Chair and Vice Chair. A vacancy in said positions shall be filled by majority vote of the Commission for the remainder of said calendar year. The Chair shall have the authority to set the agendas to the extent that the scheduling of items does not conflict with statutory timeframes to act, and set meeting dates on behalf of the Commission. In the absence of the Chair the vice chair shall be authorized to act as chair. In the absence of both the Chair and Vice Chair, the senior

most member shall preside.

### ***G. Consultants/ Consultant Deposit***

The Commission may appoint consultants to act as representatives the Commission as allowed in the Act. Said Consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall participate in meetings and activities of the Commission as the Chair or, in the absence of the Chair, the Acting Chair may designate upon the advice and consent of the Commission.

(1) Upon receipt of a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, Request for Determination, Stormwater Management Filing or any other filing with the Commission or at any time during the hearing process, the Commission is authorized to require an applicant to deposit a sum of money sufficient to pay for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This sum is called the consultant deposit. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource area survey and delineation, analysis of resource area functions and characteristics, including wildlife habitat evaluations, hydrogeologic and drainage analysis and environmental or land use law.

(2) The Commission may require the payment of the consultant deposit at any point in its deliberations prior to a final decision. The applicant shall pay the deposit which shall be put into a separate revolving fund which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.

(3) The exercise of discretion by the Commission in making its determination to require the payment of a consultant deposit shall be based upon its reasonable finding that additional information acquirable only through outside consultants and/or due to staffing capabilities and/or availability would be necessary for the making of an objective decision. Further, consultant deposit may be required to retain consultants to monitor construction, replication and/or maintenance of approved work.

(4) The Commission shall return any unused portion of the consultant deposit to the applicant. Any applicant aggrieved by the imposition of, or size of, the consultant deposit, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

(5) The initial deposit for consultant costs required to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

- a. Abbreviated Notice of Resource Area Delineation\*
  - The estimated cost of review plus 10%

b. Notice of Intent/ Abbreviated Notice of Intent Initial Deposit

<u>Project Cost(see#6)</u>	<u>deposit</u>
Under \$100,000 -	\$500.00 or Commission vote of a lesser amount
\$100,000 to \$500,000 -	\$2,500
\$500,001 to \$1,000,000 -	\$4,000
\$1,000,001 to \$1,500,000 -	\$5,500
\$1,500,001 to \$2,000,000 -	\$7,000

NOTE: Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged at an additional \$1,500 maximum fee per increment with a maximum initial deposit of \$10,000.00.

c. Continuing Monitoring for Maintenance/ Compliance/ Covenant

- The estimated cost plus 10%

(6)The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping and all site improvements. The consultant deposit shall be paid pro rata for that portion of the project cost applicable to those activities within jurisdictional areas. The project shall not be segmented to avoid being subject to the consultant deposit. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant deposit.

(7) Waiver. The Commission may waive the filing fee, consultant deposit and costs and expenses for an application filed by a government agency.

***H. Commission Meeting Rules of Order***

All Commission meetings will follow specific rules of order as specified in “Democratic Rules of Order, Seventh Edition”, pages 15 through 34 by Fred and Peg Francis with the following special conditions; the Chair may vote and participate in all discussions (p16) and all minutes shall be submitted for approval by the end of the next up-coming “off-week” of the Commission.

**II DEFINITIONS**

Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 , as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Taunton Conservation Ordinance (City of Taunton Ordinances Chapter 16 section 30-38) and the Regulations promulgated herein and any subsequent amendments. References to government bodies shall be taken as references to those government bodies or to their successors in the relevant governmental role.

The definitions provided in the Act shall apply to the Ordinance and Regulations except for those detailed below:

"Burden of Proof" means the applicant must demonstrate by a preponderance of credible evidence that the work proposed in the application taking place anywhere within the Commission's jurisdictional areas shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by the Ordinance. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by the Ordinance shall be sufficient for the Commission to deny a permit or grant a permit with conditions.

"Conservation Structures" are defined as any structure required by an Order of Conditions whose function is to protect resource areas and which require maintenance that must continue after the issuance of a Certificate of Compliance (See Section III 6. for further details). Such structures include, but are not limited to detention/retention basins, drainage swales, catch basins, artificially created breeding habitat and wildlife crossing tunnels.

"Freshwater Wetland" under the Ordinance shall mean any area that meets the criteria of the currently applicable procedures under the Act or meets at least 2 of the following 3 criteria:

1. Vegetation within the community consists of at least 50% wetland plant species, listed as Obligate, Facultative Wet, or Facultative by US Fish and Wildlife Service (FWS);
2. Hydric soils as listed by the US Natural Resources Conservation Service are present; or
3. Hydrology or field indicators of hydrology according to the procedures of the most current Federal Method for Wetlands Delineation (US Environmental Protection Agency) are present.

"One Growing Season" is considered the entire period from approximately May 30th to October 15th.

"Permits" shall collectively refer to Orders of Conditions, Resource Area Delineations, and/or Determinations of Applicability.

"Vernal Pools" are considered to be any confined basin depression that has been certified as such by the Natural Heritage and Endangered Species Program, or has been demonstrated by credible proof to contain obligate vernal pool breeding species. All such pools are protected by the Ordinance and regulations promulgated hereunder including vernal pools contained within an ILSF and BVW regardless of size. All vernal pools have a buffer zone of 100 feet and a wetland protection zone of no less than 25 feet and not more than 100 feet from its outermost edge. This edge is defined as the highest observed



water level in the pool or its maximum holding capacity in a 100-year storm event which ever is greater. The “highest observed water level” can be documented through photographs or through the observation of staining. When calculating the maximum holding capacity a “100 year storm event” of 7 inches of rain in a 24-hour period will be used. This calculation will allow for no infiltration.

“Wetland Protection Zone” (WPZ) describes an area of no less than 25 feet and no more than 100 feet from the border of BVWs, vernal pools, lakes, ponds and ILSFs larger than a quarter acre-foot in size. This zone has been established to limit or prohibit activities that may have negative impact on resource areas. Such activities may include but are not limited to the following: clearing, filling, dredging, removal of vegetation, dumping or construction. The size of the WPZ will be determined by the nature of the project and the sensitivity of the area. ILSFs containing less than a quarter acre-foot do not have a protection zone. River front area outside of the 200-foot outer riparian zone does not have a WPZ.

WPZ greater than 25 feet minimum will be required in the following situations:

1. Large, multi-lot developments in undisturbed areas;
2. Project in which a significant portion of the lot will be converted into impervious surface;
3. Areas in or near rare or endangered species;
4. Wildlife corridors;
5. Areas prone to flooding or excessive run-off.

Exemptions to the 25-foot minimum WPZ may be allowed in the following situations. In these cases the applicant will be expected to present an appropriate mitigation plan.

1. Work the Commission believes is in the interest of public safety (e.g., removal of hazards, clearing sight lines etc) or environmental protection.
2. ILSF of less than one-quarter acre-foot.
3. ILSF of greater than a quarter acre-foot the WPZ may be reduced to less than 25 feet if it can be demonstrated that they do not serve any other function than stormwater retention and recharge.
4. Under certain circumstances, the Commission may grandfather lots in existence prior to enactment of the Ordinance providing the applicant demonstrates, by a preponderance of evidence, the WPZ would represent a hardship and said hardship was not created by or with the consent and/or knowledge of the applicant.
5. Under certain circumstances, the Commission has the discretion to allow work within the 25-foot WPZ if the Applicant has demonstrated, by a preponderance of evidence, to the Commission that the work will not negatively impact the BVW, vernal pool, lake, pond, river, or other areas the 25-foot WPZ protects.

“Hardship:” A property owner can claim hardship if they suffer significant loss of the use of their property resulting from the enforcement of either state or local wetlands

regulations. Such loss of use cannot be the result of action on the part of the property owner nor can an owner claim hardship if the loss is the result of regulations in place prior to the property acquisition. The applicant must prove by a preponderance of evidence that without relief from either compliance or enforcement of the regulations would cause a hardship. In such cases the Commission may allow some regulatory relief.

“Jurisdictional ILSF:” ILSFs of greater than a quarter acre-foot are jurisdictional as currently stated in the Act and in addition under this Ordinance shall have a WPZ.

ILSFs that hold less than a quarter acre-foot of water are also presumed to be jurisdictional unless it can be demonstrated that they do not have a minimum of 1000 sq. ft. in surface area or contain 100 cubic feet of water at any time of the year. Although protected such areas have no WPZ or buffer zone. Altering such ILSF may be allowed, if the applicant demonstrates a legitimate hardship and an appropriate mitigation plan is proposed.

“Critical Breeding Habitat:” is defined as any resource or buffer zone area being used by rare and endangered species as found on the NHESP list for breeding purposes. Such areas are necessary to the survival of such species and are afforded special protection by this Ordinance. Activities which alter such areas in ways that are likely to impact the breeding success of rare and endangered species will not be approved.

“Wildlife Corridors:” are contiguous areas of land within a Wetlands Protection Zone, which provide feeding areas, breeding areas, and normal home range movement for wildlife. An area will be deemed a wildlife corridor upon presentation of credible evidence of the corridors and wildlife value. Wildlife corridors may be both narrow and vulnerable. Wildlife corridors can also contain core vegetative life, which make them sensitive and important for plant diversity.

The Taunton Conservation Commission may enforce standards for Wildlife Corridors if credible evidence is presented that an area under the jurisdiction of the TCC serves important wildlife corridor functions.

#### Standards for Wildlife Corridors

1. Fencing or any structural barrier to wildlife movement within corridors shall be prohibited.
2. The applicant shall ensure drainage from roadways be diverted away from depressed areas that may contain fragile vegetative life or shelters for wildlife.
3. Natural, indigenous vegetation shall be encouraged or enhanced by the project.
4. Disturbed areas shall be re-vegetated as rapidly as possible or within a time frame issued by the Commission.
5. Dramatic changes in topography shall be discouraged and the footprint of disturbed areas shall be limited.
6. Storage of any chemicals or materials that pose a threat to wildlife and have the capability of leaching into the environment, are prohibited in this area.

### **III PERMITTING**

#### **A. Determinations of Jurisdiction**

##### **1. Determination of Applicability (Request for Determination)**

I. General -Any person or persons who desire a Determination as to whether the Commission has jurisdiction over an area, or work to be performed in an area, shall submit a written request to the Commission in accordance with Section IIIA2 of these regulations.

The form for Requests for Determination shall be consistent with the Act and regulations promulgated thereunder and will also be in conformity with the Ordinance and its regulations. Details are outlined in the Taunton Conservation Commission Policy Handbook.

##### **II. Public Meeting (RDA)**

The Commission shall open a public meeting on the Request for Determination within 21 days and shall issue a written determination within thirty (30) days after receipt of the Request. Prior to making a determination, the Commission may require the submission of additional data deemed pertinent to the determination. The meeting may be continued with the permission of the applicant. The resource area must be reviewed and agreed to prior to the issuance of a determination.

##### **2. Abbreviated Notice of Resource Area Delineation (ANRAD)**

I. General – Any person or persons who desire to establish the extent of Bordering Vegetated Wetlands, land under water or waterways, Land subject to flooding, top of bank, mean annual high water, riverfront area, and/or vernal pools protected under WPA and/or Chapter 16 shall use the Abbreviated Notice of Resource Area Delineation for the confirmation of a delineated boundary of bordering vegetated wetlands or other resource area(s) on the site prior to filing a Notice of Intent for proposed work. The Commission, in its discretion, may review ANRAD filings from December 15<sup>th</sup> to March 15<sup>th</sup> only if the applicant agrees to concede jurisdiction on vernal pools and to the hiring of a consultant chosen by the Commission or its designee and paid for by the applicant to determine if resource areas can be confirmed.

II. Filing Procedures – The original with original signatures and stamp and eight copies of the ANRAD application, accompanying plans, supporting documentation, and the appropriate filing fee payable to the “City of Taunton, shall be sent by certified mail with return receipt requested to the City of Taunton Conservation Commission at 15 Summer Street, Taunton, Ma 02780, or hand delivered to the Planning and Conservation office. The applicant shall provide, as part of the application, a list of abutters (certified by the Assessor) within 100 feet of the property on which the proposed boundaries will be reviewed. The notice to abutters shall include the same description as provided in the application and the applicant shall provide copies of proof of mailing to abutters and to DEP, namely the Post Office certified mail receipts, at the time of filing. A legal notice, to be drafted by the Commission, shall included a list of all resource areas to be identified; said notice shall be picked up and delivered to the local newspaper of record on the dates indicated by the Commission.

### III. Completion of Form(s) and Supplementary Written Materials

1. Applicants shall submit WPA Form 4A for delineations of resource area protected under the Act and/or areas protected under Chapter 16. Form 4A should be filled out as directed in the instructions that accompany the application form.
2. Supporting documentation must be submitted for all delineations regardless of method used except "Direct Observation". The Commission reserves the right to request additional supporting information and to require a site visit accompanied by the applicant or designated representative to review the delineated boundaries.
3. ANRAD applications are to include all resource areas and must be made to include the entire parcel(s) unless the work proposed is for the replacement of a failed septic system or if the applicant is willing to concede jurisdiction.

### ***B. NOTICE OF INTENT***

1. **GENERAL** Any person who desires review of a Notice of Intent shall file with the Commission plans and specifications as required under the Act, and as further defined below.

The form for Requests for Determination of Applicability, Abbreviated Notice of Resource Area Delineation, Abbreviated Notice of Intent, Notices of Intent and Certificates of Compliance shall be consistent with the Act and Regulations promulgated thereunder and will also be in conformity with the Ordinance and its regulations. Details are outlined in the Taunton Conservation Commission Policy Handbook. Any application for Notice of Intent on commercial and residential projects over five acres must contain an Order of Resource Area Delineation (ORAD).

2. **FILING PROCEDURES** Eight copies of the Notice of Intent application, accompanying plans and pertinent data, and the appropriate filing fee, payable to the "City of Taunton", shall be sent by certified mail, or hand delivered, to the City of Taunton Conservation Services, 15 Summer Street, Taunton MA 02780. The applicant shall provide, as part of the application, an original form with original signatures and stamp and two copies, a list of abutters (certified by the Assessor) within 100 feet of the property on which the work is proposed. The notice to abutters shall include the description of the project as found in the application. The applicant shall provide copies of proof of mailing to abutters at the time of filing. At least one copy of the Notice of Intent plan must be at the same scale as the ORAD plan
3. **COMPLETION OF FORM(S) AND SUPPLEMENTARY WRITTEN MATERIALS(S)**

3.1 **General** Written responses to the questions on the forms, and narratives explaining in detail how the proposed project protects the interests identified in the Act and the Ordinance receive close attention from the Commission. These text materials are a required and important part of the record the basics of which

are outlined below. The Commission reserves the right to request further information in any reasonable form as necessary to render a decision.

**3.2 Preliminary Narrative** Start with a background section briefly outlining the characteristics of the site: its topography, geologic origin, soil characteristics, and relation to regional drainage, current land use and vegetation cover, and describe wetland resource areas and their current condition.

For each resource area type, show how your design minimizes the adverse impact on the specific interests mentioned in the Act and Ordinance (Public and private water supply, prevention of storm damage, surface and groundwater quality, etc.).

**3.3 Stormwater Management** Storm water maximum flow rate estimates and hydrographs shall be prepared in accordance with Appendix C of the Notice of Intent application. The applicant is required to submit three (3) copies of all Stormwater Management documents required to comply with the Act.

**3.4 Incomplete Application** An application shall include, at a minimum, a properly executed Notice of Intent form issued by DEP or the Commission and the items required in these Regulations as outlined in General Instructions for filing.

If the Commission determines that an application is incomplete or improper, it shall notify the applicant within 21 days of the date of receipt. The Commission may, at its discretion:

1. Return the entire application, in which case all required time periods for processing the application shall be void. Upon receipt of the complete application, a new time period for action will commence.
2. Require that additional information or materials be submitted within a specified period of time.

**3.5 Narrative** The description must specifically identify all work proposed, the area affected by the work including any removal of trees or other vegetation, the steps that will be followed in doing the work, and the measures that will be taken to avoid affecting resource areas and to restore the work areas after the work is finished, such as loaming and planting grass.

Sequences and timetables should be given. The Commission normally requires all mitigation, replication, easements, open space amenities and the like to be completed before any other construction is allowed. Any applicant requesting a different sequence shall show why such a procedure is necessary, and propose a method such as a performance bond by which the public interest in such mitigation, etc., may be protected.

**3.6 Requirements for Large Projects.** All projects, not identified as small projects

(See Requirements for Small Projects Section 3.9), are large projects and shall conform to these guidelines applicable to large projects, unless the Commission has found by majority vote that some other procedure satisfactorily protects the interests of the Ordinance and Regulations. The Commission encourages innovative practices to promote the interests of the Act, the Ordinance and the Regulations promulgated thereunder, but applicants will be expected to provide a preponderance of evidence and documentation to support any contention that some other method is superior to methods referenced here.

If the Commission recognizes a project as “specialized” it may, in its sole discretion, waive some or all of these requirements.

All projects involving the use of herbicides, de-icers, fertilizers, and/or insecticides shall specify the trade name, components, application rates and frequencies. In order to protect resource areas, wildlife, and water quality, the Commission may regulate the above procedures including but not limited to requiring compliance with all label requirements and other official recommendations. The Commission may also require the substitution of other substances or procedures.

3.6.1 Supporting Documentation. Document the basis in the engineering or scientific literature for statements, interpretations and proposed management practices. If a publication is particularly important to an argument, provide a photocopy of it or of the relevant sections.

3.6.2 Replication Plan. If wetland replication is planned, the applicant must file a detailed plan including procedures and timetables for preparation, planting, and evaluation. The specific requirements for a replication plan are as follows:

3. The proposed replication area must be shown. This area must be at least twice the area of the wetland the applicant seeks to fill except for jurisdictional ILSFs (those holding less than a quarter acre-foot of water or less than 1000 sq ft in surface area). This replication area must be at least equal to the area of the ILSF the applicant seeks to fill;
4. The elevation of the adjacent wetlands and the base elevation of the excavation in the replicated area;
5. A Planting Grid showing the location, species and density of all proposed plantings;
6. A species list of plants used. The species must represent those found in the surrounding wetlands;
7. A detailed sequence of replication events;
8. The area designated for stockpiling soils to be used in the replication, including a cross section of the proposed silt protection.

### 3.6.3 Procedure

9. All replicated areas are to have a hydrological connection to the wetland proposed for filling.
10. Applicants are encouraged to transplant using plants and soil from the filled area.
11. No plants may be removed from the buffer zone.
12. The elevation of wetlands replication area is to be the same surface elevation of the adjacent, existing wetland.
13. The proposed plant density in the replicated area should equal that of the altered wetlands.
14. The replication should occur as early as possible in the construction process and should be substantially complete (excluding grow out) prior to construction of any buildings.
15. No Final Certificate Of Compliance will be issued until replication is complete and successful such that:
  - a. No less than two (2) growing seasons have passed;
  - b. At least 50% of the replication area has achieved at least 50% coverage with the proposed wetland species; and
  - c. Hydric soils are present in the entire replication area.

The Commission reserves the right to require fencing to protect newly planted replication areas.

3.6.4 Mitigation Plans The Commission may require additional work to minimize adverse impacts in any area under the jurisdiction of the Commission.

### 3.7 General Plan Requirements

3.7.1 Scale of Main Plan. Scale of the map should be suitable for detailed study and measurement of the proposed work, not more than 50 feet to the inch. Existing and proposed contours at an interval of not more than two feet should be shown. Each plan shall show both a numerical indication of scale and a graphical scale.

If insets have a different scale than the main plan, this must be clearly indicated.

3.7.2 Supplementary Plans. More than a single plan may be necessary to clearly and legibly represent all the relevant information. The page sequencing for supplementary plans shall be clearly indicated. Supplementary maps particularly likely to be needed are: total watershed including the site and offsite areas draining into any part of the site, sub-watersheds, soil and cover. Where the information on such supplementary plans can be presented legibly on a reduced-size plan at a scale of more than 50 feet per inch, such reduced plans may be

submitted in lieu of full size plans, but the main plan must meet the stated scale requirement.

Eight copies of the plans shall be filed with the NOI.

**3.7.3 Specific Data Required on Plans.** The following are minimum data requirements for all filings and drawings. Drawings failing to provide all applicable data from this list may cause your filing to be considered incomplete. Incomplete filings may be returned by the Commission and the 21 day period for scheduling of the public hearing will be considered not to have started. Additional site-specific data requirements may be imposed by the Commission if it finds they are needed to evaluate the impact of the proposed project on the interests mentioned in the Act and Ordinance, and these data requirements are in addition to those requested in the guidelines issued from time to time by the Department of Environmental Protection Wetlands Division.

**3.7.4 Title Block.** Title block at lower right of drawing giving purpose of survey, owner's name, street address if applicable, map and lot number, date of submission of plan.

**3.7.5 Revision Block.** All drawings shall have a revision block with provision for dates and explanations for all change. Revision information shall be kept current and complete.

**3.7.6 North Arrow**

**3.7.7 Identifying Information.** Stamp and signature of Registered Professional Engineer responsible for the plan. When wetland lines are shown, the name of the person making the delineation shall be included on the plan as well as the date said line was accepted by the Commission.

**3.7.8 Legend.** A legend shall show the meaning of all line types and symbols used on the plan. The vertical datum and benchmarks used shall be clearly stated.

**3.7.9 Locus Map.** The main plan shall contain a small inset locus map (this is in addition to any locus map that may be attached to the application).

**3.7.10 Wetlands Flag Locations.** Each wetlands flag shall be individually identified on the plan with a unique identifying number or other designation from a consistent numbering system applied over the whole project. The wetlands flag itself shall be marked in the field with a number matching the number on the map and the initials of the botanist. Wetland flags shall be distinguishable by color or markings from all other flags used at the site. (Wetlands flags are to be maintained until a final Certificate of Compliance is issued.)

**3.7.11 Location of Existing and Proposed Structures.** Locations of all existing and



proposed dwellings, other buildings, roadways, driveways, parking areas, underground utilities, pipes, and sewage disposal facilities and other structures. Proposed paving material must be specified for driveways, roadways and parking areas. Approximate or provisional locations are not acceptable. A "footprint" on the plan is considered to be a commitment that no part of the final structure will be outside the line shown.

3.7.12 Surface Water. Locations of all water bodies and permanent and intermittent water, and the course of surface water shall be shown.

3.7.13 Stockpiling Areas. Any areas to be used for stockpiling of fill or excavated materials on the site, including silt protection as required by the Commission, or a statement that all stockpiling will be outside the buffer zone will be included on the plan.

3.7.14 Areas Subject to Flooding. The estimated maximum extent of flooding in the 100 year statistical storm for both bordering and isolated areas subject to flooding shall be shown on the plan including a note of the source for establishing said elevation.

3.7.15 Subsurface Sewage Disposal Systems. Location, elevation, and type of all subsurface sewage disposal systems within 100 feet of the limit of work shall be shown.

3.7.16 Wells. All existing or proposed wells within 100 feet of the site shall be shown, and details of any actual or potential public water supply in the watershed shall be given.

3.7.17 Point Source Discharges. All point source discharges into the buffer zone and/or resource areas shall be shown, with information on their sources, water quality characteristics, and estimated maximum flows. An artificial surface channel or swale entering the buffer zone shall be considered a point source for this purpose.

3.7.18 Drainage Structures. Locations, dimensions, elevations of inverts and slopes of all proposed, and all relevant existing, drainage and flood control structures, ditches, swales, pipes and culverts.

3.7.19 Easements. All existing and proposed rights of way, trails, easements, and restrictions shall be shown.

3.7.20 Grading Tolerances. Plan must show existing and proposed contours.

3.7.21 Vegetation Types and Trees. All trees exceeding 6 inches diameter at a height of 4.5 feet within the Commission's jurisdiction, shall be individually shown on the plan including stem location and the line of maximum extent of

crown coverage ("drip line"). When jurisdictional area of project exceeds 1 acre a narrative describing the approximate number of trees exceeding 6 inches diameter at a height of 4.5 feet will suffice. Trees to be removed must be clearly marked on the plan, and flagged in the field.

3.7.22 Revisions and Amendments To Plans. No change may be made in a structure, location or elevation on a submitted plan without prior written approval of the Commission or its designated Agent.

3.7.23 Digital Format – all plans shall be submitted to the Conservation Commission in a digital “pdf” format in addition to the paper plan sets.

### 3.8 Performance Standards And Supplemental Documentation

3.8.1 Flood Control Engineering calculations shall be submitted to fully support the design of compensating flood storage areas for alterations that affect bordering land subject to flooding and isolated land subject to flooding. The calculations shall detail the existing incremental flood storage volumes and the proposed incremental flood storage volumes up to 100-year flood elevation. There shall be no net loss of flood storage volume at any elevation. There shall be no net increase in the rate of runoff as a result of any project.

3.8.2 Detention Structures. No water may be discharged into detention structures until those structures have been fully stabilized. The inlet(s) and outlet(s) are to be built and protected with siltation barriers. Siltation barriers are to be placed at catch basins to prevent detention basins from silting. The barriers are to be utilized whenever an unstabilized lot could deposit silt into the roadway.

3.8.3 Binder course. The binder course is to be placed as soon as possible after road base is placed and must be placed before the end of the paving season.

3.8.4 Wildlife Habitat The applicant must submit a description of valuable and/or unique wildlife habitat characteristics observed on the subject property. This includes wildlife habitat in wetlands and the upland portion of the buffer zone or in or near areas identified by NHESP. Valuable upland habitat shall, to the fullest extent possible, not be used to locate wetland replication areas. The Commission shall not render a decision on a project until NHESP has submitted comments or the comment time period has expired.

In a situation where the alteration of a habitat of rare species is involved, or where a vernal pool would be altered, in or near areas identified by NHESP, or in areas where the Commission has received evidence from credible sources that the land contains unique wildlife habitat or credible evidence that the land contains core habitat as defined by Fish and Wildlife, a habitat study be performed by a qualified wildlife biologist may be required by the Commission. The habitat study and the design of a compensating wetland/wildlife habitat shall be performed to

the satisfaction of the Commission. Projects resulting in the loss of critical habitat, or causing negative impacts on critical habitat, of rare, threatened, endangered species or species of special concern shall not be permitted.

3.8.5 Storm Water Management. The Applicant must submit all documents in compliance with current Massachusetts Stormwater Regulations and submitted with the NOI application. The method and calculation for total suspended solids removal must be acceptable to Commission. The Operation and Maintenance Plan must be defined and to the satisfaction of the Commission.

3.8.6 Detention/Retention Basins. The detention basin outlet works shall, to the fullest extent possible, be designed to be maintenance free, and self-cleaning.

The detention basin inlet and outlet works shall be designed to avoid scour and erosion of the basin bottom and discharge channel.

Storage capacities shall be based on the volume of active storage above the maximum seasonal ground water level. Test pits will normally be required to determine the maximum groundwater level.

3.9 Requirements For Small Projects Definition: small additions to a single-family house within one hundred feet of a resource area, minor landscaping projects near, but not in, resource areas, small detached structures, septic repairs and similar projects. A project is considered a small project only if it does not involve work within a resource area.

3.9.1 Plan Required. A detailed sketch map or plan shall be provided on an 8.5 x 11 inch sheet attached to the form. It must be drawn to scale, with:

16. A wetland line.
17. A title block giving the street address, owner's name, date prepared, map and lot number (from the Assessor's records), and type of project (e.g. "House addition", "New Shed").
18. Dimensions for all existing and proposed structures.
19. Location of the proposed work, with measured distance to the nearest point of the wetlands, measured distances from nearest fixed structures and distances to property line.
20. Location of wetlands within 100 feet of the work.
21. Any trees within 100 feet of a resource area the applicant seeks to remove which are larger than 6 inches in diameter at a height of 4.5 feet above the ground should be individually shown on the plan and flagged. Any trees to be removed must be specifically marked on the plan, and also the trees themselves must be marked with flagging tape. The owner is responsible for ensuring that only those trees marked and approved for removal by the Commission are removed or damaged in the course of the work, on penalty of a fine or revocation of permit.

22. Topographical information adequate for the Commission to evaluate potential runoff impacts.

3.9.2 Digital Format – all plans shall be submitted to the Conservation Commission in a digital “pdf” format in addition to the paper plan sets.

3.10 Changes and Amendments The narrative and plan are a legal obligation on applicant’s part to do the work in the way specified. Changes in the location, size or type of work are not permitted without the written approval of the Commission. For more detailed information regarding the application process see the Permits and Decisions.

4. PUBLIC HEARING The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. If additional data, or time to review data, is needed, the Commission may vote to continue the public hearing.

5. PREREQUISITES FOR COMMENCEMENT OF WORK

5.1 Recording Requirements Prior to commencement of site alteration, the applicant shall provide to the Commission receipted proof that the permit has been recorded in the chain of title of the subject property at the Registry of Deeds or Land Court.

5.2 Bond Prior to commencement of site alteration, the bond must be posted if required by the Commission.

5.3 Site Sign Prior to commencement of site alteration, the applicant shall display at the entrance of the site a sign identifying the permit for the work. If the DEP number is posted as required by an Order of Conditions, it will be sufficient. Otherwise the local permit number must be shown on a sign at least 2’ x 2’ and no larger than 3’ x 3’.

5.4 Maintenance of Conservation Structures The applicant shall be responsible for securing by way of a covenant, easement, deed restriction, or other legal instrument a perpetual mechanism or fund for the maintenance of the basin by the heirs and assigns of the property on which the basin is located. Proof of said filing shall be required prior to issuance of COC.

6. CERTIFICATE OF COMPLIANCE Prior to expiration of Order of Conditions the applicant shall apply for a Final Certificate of Compliance for work performed under the Order of Conditions. The Commission will require a letter from the applicant or engineer of record stating work is performed in accordance with terms of the Order and an as-built plan confirming stabilization of all disturbed areas.

Where the final as-built survey shows grading specifications have been deviated from the Commission may require the applicant to re-grade to specifications. The Commission may issue a letter for purpose of transfer of property only if the sole remaining issue is stabilization. Failure to obtain a Certificate of Compliance prior the expiration of the Order of Conditions will be a violation of the Ordinance.

**C. Amendments and Revisions** Prior to any change, the applicant must request a determination from the Commission as to whether the proposed change is a minor (revision) or major (amendment) change. Said request shall include a full description of the proposed changes including a detail of continued compliance with performance standards

If the Commission finds the change requires an amendment of the plan upon a majority vote of the Commissioners, the Commission will require the filing of an amendment and a public hearing and review as the proposed change will be found likely to represent a significant change in the wetlands impact of the project. The expiration date of the Order of Conditions will not be extended unless the applicant specifically asks.

A minor revision shall not require a new hearing. A minor revision shall require a review by the Commission or its designee to determine that the change is in conformance with the stated criteria below. A minor revision shall include the following;

1. Typographic errors
2. Reduction of impervious area
3. Movement of a project further away from a resource area and not closer to or into another resource area
4. A decrease in the scope of work in the jurisdictional area
5. Any change determined by majority vote of the Commission to be minor in nature

Approval of an amendment does not extend an Order of Conditions . Also, Amendment and revisions shall be submitted at the same scale as the original approved plan

Failure to adhere to the plan puts the applicant and any other persons responsible at risk of fines as delineated in the Ordinance and the Regulations promulgated there under.

**D. Revocations, Modifications, Amendments** The Commission may revoke, modify or amend an order issued under the Act and/or Ordinance and Regulations if any of the following circumstances occur:

1. The applicant and/or his successors fail(s) to comply with the terms of the order;  
or
2. New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate.

The Commission may revoke a permit when evidence from credible sources indicate information presented to the Commission contain inaccuracies sufficient to have caused a

denial of the permit.

The applicant may request, and/or the Commission may grant, a modification to an existing Order if the proposed change is considered minor or insignificant by the Commission. If the Commission issues a decision that requires a plan revision, a copy of that revision shall be sent to the Commission and accepted as a modification.

The applicant may request, and/or the Commission may grant, an amendment to an existing Order if that change can adequately be addressed by amending the existing Order. An amendment requires the applicant to follow procedures required for a new public hearing.

### ***E. Performance Guarantee***

1. **ONGOING CONDITIONS** The Commission may specify on the Certificate of Compliance that certain conditions of the order, such as maintenance of waterways and catch basins, and erosion control measures, are imposed perpetually and do not expire with the issuance of the Certificate.

The person to whom the Certificate is issued shall forthwith record it in the Registry of Deeds or Land Court in the chain of title of the affected property.

2. **BONDS OR SURETY**

2.1 **Amount of Bond or Surety** The Commission may require the applicant to file a performance bond or a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. Bond amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands and to permanently stabilize the work site and all soils. Bonds shall be determined on a site-by-site basis using these general guidelines:

Project Range of Bond · Single Family Home \$3,000 to \$10,000. · Commercial/Industrial Facility \$5,000 to \$15,000. · Subdivision 0-20 homes (within jurisdiction) \$10,000, 21-40 homes \$20,000, 41-60 \$30,000, etc.

2.2 **Reduction of Bond or Surety** The penal sum of any required bond, or the amount of any deposit held hereunder may, from time to time, be released by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. As the work progresses towards completion, the Commission may chose to retain only a portion of the bond sufficient to complete remaining work.

2.3 **Release of Performance Guarantee** Upon completion of site alterations required in the permit, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with

respect to the site, the applicant may request and agree on terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the City in such bond and return the bond or the deposit to the person who furnished same, or release the covenant, if appropriate.

If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

3. **COVENANT** The Commission may require the applicant to secure the performance and observance of conditions imposed on the project, by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the City whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

#### **IV AVAILABILITY OF REGULATIONS**

Copies of these Regulations and the Ordinance shall be made available for purchase from the City of Taunton Conservation Services, 15 Summer Street, MA 02780, for the price of \$15.00 in the form of a check or money order.

#### **V AMENDMENTS TO REGULATIONS**

These Regulations may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on amendment, the Commission shall have held a public hearing on the proposed change(s). Submission of a request for amendment of said regulations shall be made to the Commission, who shall by majority vote authorize a public hearing to consider said amendment request

Notice shall be published in a local newspaper at least five business days prior to the hearing and a copy of the proposed changes shall be on file with the City Clerk and the Planning and Conservation offices no later than the day of publication of said hearing notice

#### **VI POLICIES**

These Regulations may be supported and clarified by policy statements issued by the Commission. These Policies will be made available to any individual upon request. Persons seeking permits under the Ordinance and Regulations should review the Policy Handbook available in the Conservation Office for a fee.

In addition to policies contained in the handbook the following policies shall be adhered to at all times.

1. All correspondence, updated plans or information shall be submitted to the Commission at least five business days prior to be placed on any agenda for consideration, review or action by the Commission.

2. The Commission reserves the right to close agendas and schedule items as it sees fit within the statutory time frames to act.

## **VII EFFECTIVE DATE**

An advertised public hearing was held on these Regulations on 9/8/03. The Commission voted to adopt these regulations on 9/8/03 effective immediately. All other amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the City Clerk.

## **VIII SEVERABILITY**

If any provision of these Regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these Regulations not specifically held invalid, nor shall it invalidate any Order, Permit, or Determination which previously had been issued, and to this end the provisions of these Regulations are declared to be severable.

## **IX ENFORCEMENT**

A. General The Commission or the Conservation Commission through a designee of the Commission may enforce these Regulations, or an Order, Permit, or Determination issued thereunder, in any manner consistent with Section 16-34 of the Ordinance and these Regulations promulgated thereunder, The Home Rule Amendment, and all other laws.

B. Violations and Fines. The Commission or the Conservation Commission through a designee of the Commission shall have the authority to impose penalties and issue fines for failure to adhere to the provisions of the Ordinance and Regulations promulgated thereunder and/or the Act.

The standard and fine schedule are attached as Appendix 1 and incorporated as part of these regulations. Each day the violation continues may constitute an additional offense/violation.

1. **LEVEL 1 VIOLATIONS.** These violations result from relatively minor activities occurring without filing a request for determination. Such violations occur only in the buffer zone. Brush removal, branch cutting, etc. would be considered Level 1 Violations.

1.1 The Standard to be Applied. Will merely ceasing the activity allow the buffer zone area to repair itself? Typically these kinds of violations result from a defect of form (the activity might have received a negative determination if the applicant had filed a request). A Level One violation should not impact the resource area or significant wildlife habitat.

1.2 Refusal to Respond Refusal to respond to a Level 1 violation within a specified time period can result in it becoming a Level 2 violation.

2. **LEVEL 2 VIOLATIONS** These violations are more serious. Such violations refer to more extensive work in the buffer zone or any work in the resource area.



2.1 Buffer Zone Tree cutting (Definition 3-inch caliper or greater)

2.2 Resource Area Removing brush within the wetland or river front area would be considered a Level 2 violation. Leaf litter dumped into a wetland would be considered a Level 2 violation.

2.3 The Standard to be Applied Can the wetland recover by itself in a single growing season? Can the damage to the buffer zone be repaired within a reasonable amount of time?

2.4 Refusal to Respond Refusal to respond to a Level 2 violation within a specified time period can result in it becoming a Level 3 violation.

### 3. LEVEL 3 VIOLATIONS

3.1 Buffer Zone Tree cutting and stumping, extensive earth-work, removal of large trees, building structures with foundations.

3.2 Resource Areas Tree removal or trash dumping.

3.3 The Standard to be Applied This work would have required a NOI. Can the materials be removed from the wetlands without extensive disturbance? Can the removal work be done by hand? Is it possible to replace the trees removed with trees of equivalent caliper?

3.4 Refusal to Respond Refusal to respond to a Level 3 violation within a specified time period can result in its becoming a Level 4 violation.

### 4. LEVEL 4 VIOLATIONS Damage to the resource area requiring extensive restoration. Damage to known rare or endangered wildlife habitat within the resource area. Extensive siltation into the resource areas, filling the resource areas, placing hazardous materials within the resource area or within the buffer zone

4.1 The Standard to be Applied This work would not have received an Order of Conditions. The repair process will require considerable expense and machine work. It will take several years for the disturbed area to recover.

### 5. INACCURATE INFORMATION

One time fine for the submission of inaccurate information and/or incorrect as-built plans.

**X Waivers**

Waivers may not be granted by the Commission except as follows;

1. Local Filing fees for governmental or non-profit projects.
2. Local Filing requirements determined to be onerous and/or unnecessary for the size, scope, use or activity proposed

Any waiver request must be made in writing to the Commission and must be approved by a majority vote of the Commission. Submittals that contain waiver requests may be processed for hearing pending action by the Commission on said request provided all other requirements have been met.